



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-35
Regulation title	Virginia Independence Program
Action title	Amend the Virginia Independence Program regulation by updating outdated information and changing the paternity identification requirements.
Date this document prepared	February 18, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulatory action amends the Virginia Independence Program regulation by (1) removing obsolete references to the Aid to Families with Dependent Children (AFDC) program, the Virginia Targeted Jobs Grant (VTJG) Program, and Code of Virginia (Code) citations that were renumbered during recodification; (2) aligning exemptions from the Virginia Initiative for Employment not Welfare (VIEW) with those listed in the Code; (3) expanding opportunities for individuals to apply for VIEW hardship exceptions and allowing greater participation in educational activities when participating in community work experience; and (4) delineating the process for establishing paternity when an applicant for Temporary Assistance for Needy Families (TANF) has provided information on multiple possible fathers of the child.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Virginia Independence Program regulation will be approved by the State Board of Social Services (Board) on February 18, 2009.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Pursuant to § 63.2-217, the Board has authority to promulgate rules and regulations necessary for operation of all public assistance programs. These amendments to the Virginia Independence Program regulation are discretionary but will correct inaccuracies in the regulation and make the regulation more complete.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

- The AFDC program was replaced by the TANF program with passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The term "AFDC" is obsolete and needs to be updated with "TANF."
- The Virginia Targeted Jobs Grant Program was discontinued by the General Assembly. References to the Virginia Targeted Jobs Grant Program are obsolete and need to be removed from the regulation.
- Sections of the Code pertaining to the TANF program were recodified; these citations in the regulation are obsolete and need to be updated.
- Exemptions from VIEW need to be updated in the regulation so they are consistent with the Code. While all of the exemptions listed in Code were allowed in practice, the exemptions were not all included in the regulation. Amending the regulation to include all the exemptions from VIEW will make the regulation more complete and understandable for citizens.
- Allowing greater participation in educational activities for those participating in work experience will provide for better long-range outcomes for recipients of TANF.
- Former VIEW participants, in the period of ineligibility after VIEW participation, should have the opportunity to receive additional months of TANF assistance in certain circumstances. This is addressed by expanding the opportunity to request an evaluation for a hardship exception. An evaluation for a hardship exemption will include requests from (1) former VIEW participants in the period of ineligibility after VIEW participation, and (2) requests from individuals who are currently participating in VIEW and are within 60 days of the scheduled closure of the TANF case due to the receipt of 24 months of TANF benefits.
- The amendment to the regulation regarding non-cooperation in establishing paternity was made at the request of the Office of the Attorney General to avoid the potential for litigation. The Attorney

General's Office advised that the regulation concerning cooperation in establishing paternity was not comprehensive and did not address the situation of a client naming numerous potential fathers.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The Virginia Independence Program regulation is amended by (1) updating Code citations that changed as a result of recodification; (2) updating "AFDC" to "TANF" to reflect changes in law; (3) updating the VIEW exemptions and definitions; (4) removing obsolete language concerning the receipt of federal waivers; (5) removing references to the Virginia Targeted Jobs Grant Program; (6) allowing greater participation in educational activities when participating in community work experience; (7) expanding opportunities for individuals to apply for VIEW hardship exceptions; and (8) addressing situations when an applicant for TANF names multiple putative fathers. The applicant will be considered to be cooperating until five named fathers have been eliminated by genetic testing and the individual refuses to pay for the other potential fathers to be tested. The Division of Child Support Enforcement will pay for testing the first five named fathers. If the applicant fails to assume full responsibility for any additional genetic testing, it will be considered non-cooperation.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The advantages of the amendments to the Virginia Independence Program regulation are that they:

- Update obsolete language and references (such as AFDC and Virginia Targeted Jobs Grant) making the regulation easier to understand for both citizens and local department of social services (LDSS) staff.
- Amend the VIEW exemptions and definitions to provide a clear statement of all individuals who will be required to participate in the VIEW program.
- Allow VIEW participants to participate in educational activities once the participant has met the required 20 hours per week of participation in a core work activity, providing the participant the opportunity to improve his/her education and skill level to enhance his/her future employability while concurrently meeting the participation requirements of the VIEW program.
- Revise the number of days that the LDSS has to determine eligibility for diversionary assistance from within 45 days to within 30 days of the date of the receipt of the signed application or within five working days of the receipt of the final verification that substantiates eligibility, whichever occurs first, to align this policy to the policy for processing other TANF applications.
- Provide former VIEW participants, in the period of ineligibility after VIEW participation, the opportunity to request a hardship exception, the same as those individuals who request a hardship exception while still participating in the VIEW program (in the 60 days prior to the closure of the TANF case due to receipt of 24 months of TANF benefits). This establishes a uniform guideline for all VIEW participants to be evaluated for a hardship exception regardless of when the request is made – either prior to or after the TANF case closure.

- Amend the regulation to clarify the process for establishing paternity where a parent is unsure of the identity of the father of the child. By establishing uniform guidelines, the client, as well as the LDSS, can be assured that the same process is applied to each client without variation.

DSS is aware of no disadvantages to making these amendments.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
100	Assigned hours per week of community work experience hours can be substituted for educational activities during the participant’s initial six-month placement in community work experience as long as the participant is engaged in community work experience of at least 20 hours per week.	No substantive change has been made. The language has been edited to clarify the intent that educational activities can be substituted for community work experience hours during the participants initial six-month placement in community work experience.	The language was changed to more clearly reflect the intent of the proposed change.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Marie D Popiolek	Strike "If the applicant or recipient is not certain of the child’s paternity, he shall identify all individuals with whom the mother had sexual intercourse who may be the father." from the text. Strike "If the parent is unsure of the identity of the father of the child, she is to name all potential persons who may be the father of the child." from the text. Strike "If the parent is unsure of the	This language is needed to provide the applicant the opportunity to name any person who may be the father. DSS will pay for genetic testing until five men have been genetically eliminated as the father. The applicant must understand that if more than five men are named, she will be responsible for the cost of any further testing. Nothing precludes providing documentation that the child was conceived as the result of an anonymous donor in accordance with paragraph A.1. As with the first comment, this language is

	<p>identity of the father of the child, she is to name all potential persons who may be the father of the child." from the text.</p>	<p>needed to provide the applicant the opportunity to name any person who may be the father. DSS will pay for genetic testing until five men have been genetically eliminated as the father. The applicant must understand that if more than five men are named, she will be responsible for the cost of any further testing.</p>
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All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-35		<p>References are made to Aid to Families with Dependent Children (AFDC) throughout the chapter.</p> <p>Several Code citations in the regulation are out of date and need to be updated due to recodification.</p>	<p>References to AFDC have been changed to TANF throughout the chapter.</p> <p>The Code citations in the regulation were updated.</p>
22 VAC 40-35-5		<p>Provisions of this regulation requiring additional federal waivers shall become effective only upon the receipt of such waivers.</p>	<p>This section would be removed as there are no federal waivers for the program at this point.</p>
22 VAC 40-35-10		<p>Lists the terms "AFDC Foster Care", "Full time unsubsidized employment", "Job Opportunities and Basic Skills Training Program (JOBS)", "Job finding", "Job matching", "Qualified business employer", "Qualified employee", "Qualified employer", "Qualified participant", and "Virginia Targeted Jobs Grant."</p> <p>To complete a job search, the participant must search and apply for a set number of jobs.</p>	<p>The terms are obsolete and have been removed.</p> <p>The participant will no longer have a requirement to complete a set number of job search contacts. The participant must spend a set number of hours searching for employment. The number of hours will be</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			determined/ assigned by the Employment Services Worker/ Case Manager in the local social service agency.
22 VAC 40-35-20		The parent must name all potential persons who may be the father of the child. The parent is considered to be cooperating until all named fathers have been eliminated.	If the parent is unsure of the identity of the father of the child, she is to name all potential persons who may be the father. Paternity testing will be provided for up to five potential fathers at the expense of the Division of Child Support Enforcement. After five potential fathers have been eliminated, the client will assume full responsibility for further paternity testing. If the parent fails or refuses to pay for further paternity testing, this will be considered to be non-cooperation.
22 VAC 40-35-40		LDSS shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within 45 days of the receipt of the signed application, whichever occurs first.	LDSS shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within 30 days of the receipt of the signed application, whichever occurs first.
22 VAC 40-35-80		Lists exemptions from VIEW that were allowed under previous versions of the Code.	All of the exemptions from VIEW that are in the Code have been added to reflect the actual practice of exemption. The exemptions were revised in 2006/2007 due to the passage of the Deficit Reduction Act of 2005.
22 VAC 40-35- 90		The LDSS shall provide transitional medical assistance in accordance with the Department of Medical Assistance Services State Plan and regulations.	Transitional medical services are no longer automatically provided as part of the services available for former VIEW participants. These individuals may apply for Medicaid and will be evaluated using the regulations of the Medicaid program in Virginia and the Department of Medical Assistance Services State Plan.
22 VAC 40-35-100		<p>A VIEW participant who does not meet an exemption shall be required to participate in a work activity. DSS shall ensure that participants are assigned to one of the approved employment categories not less than 90 days after AFDC eligibility determination.</p> <p>Only eight hours per week of community work</p>	<p>A VIEW participant who does not meet an exemption shall be required to participate in a work activity. DSS shall ensure that participants are assigned to one of the approved employment categories after TANF eligibility determination and entry into the VIEW program.</p> <p>Assigned hours per week of educational activity hours can be substituted for</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		<p>experience hours could be provided for educational activities during the participant's initial six-month placement in community work experience.</p>	<p>community work experience hours during the participant's initial six-month placement in community work experience. as long as the participant is engaged in community work experience of at least 20 hours per week.</p>
<p>22 VAC 40-35-120</p>		<p>In certain circumstances, hardship exceptions may be made to the time limitations for receipt of AFDC benefits. If the participant requests a hardship exception, the LDSS shall make an evaluation of participation while in VIEW.</p> <p>There are conditions which must be met for the individual to qualify for a hardship exception for up to one year. One of the conditions is the unemployment rate in the participant's locality for the two most recent quarters for which data is available from the Virginia Employment Commission prior to the individual's two year time limit elapsed was 10% or greater.</p> <p>Extensions of hardship exceptions will be granted in very limited circumstances and only to those persons who demonstrate an extreme hardship. The LDSS shall refer the case to a panel for evaluation of the extension.</p>	<p>In certain circumstances, hardship exceptions may be made to the time limitations for receipt of TANF benefits. The participant may make a request for a hardship exception during the 60 days prior to the closure of the TANF case due to the receipt of 24 months of TANF benefits or during the period of ineligibility resulting from the receipt of 24 months of TANF benefits. The LDSS shall make an evaluation of participation while in VIEW as well as the period of ineligibility after VIEW participation.</p> <p>There are conditions which must be met for the individual to qualify for a hardship exception for up to one year. One of the conditions is the unemployment rate in the participant's locality for the two most recent quarters for which data is available from the Virginia Employment Commission prior to the individual's request for a hardship exception was 10% or greater.</p> <p>Extensions of hardship exceptions will be granted in very limited circumstances and only to those persons who demonstrate an extreme hardship. The LDSS shall refer the case to the Commissioner of DSS or designee for evaluation of the extension.</p>
<p>22 VAC 40-35-125 22 VAC</p>		<p>These sections address the Virginia Targeted Jobs Grant (VTJG) Program and the procedures for claiming</p>	<p>This section would be removed as the Virginia Targeted Jobs (VTJG) Program has been discontinued by the General Assembly and is no longer available.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
40-35-126 22 VAC 40-35-127 22 VAC 40-35-128 FORMS		a VTJG and an employer tax credit. The Virginia Employer Tax Credit Application Form is listed.	 As the VTJG section has been removed, the form is obsolete and has been removed as well.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

These are the least stringent compliance and reporting requirements possible while still meeting the goals of the regulation. There are no alternative regulatory methods that will accomplish having the regulation reflect current terminology, correct Code citations, complete statutory language (reflect all VIEW exemptions), or add clarifying language to the regulation.

The proposed regulatory action establishes no additional reporting or compliance requirements nor additional schedules or deadlines other than those required by the Code.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulation strengthens personal responsibility and will lead to the establishment of more paternities. The establishment of paternity is important for families and children. Paternity creates a legal relationship between the father and the child. Paternity establishment is required to make the father legally responsible for paying child support. Paternity establishment may provide legal benefits for a child, such as a share of social security, disability or veterans benefits if the father dies, becomes disabled or is already deceased, rights to any inheritance from the father, and rights to the father's medical or insurance benefits.